

<b>BRENT K. LINDAL</b>	)	
Claimant	)	
VS.	)	
	)	
<b>OASIS STAFFING, INC.</b>	)	Docket No. 1,029,302
Respondent	)	
AND	)	
	)	
<b>ZURICH AMERICAN INSURANCE COMPANY</b>	)	
Insurance Carrier	)	

<sup>1</sup> P.H. Trans. at 7.

Claimant continued working for about 15 minutes. However, the burn began to blister, and claimant was sent to the emergency room at Via Christi Occupational & Environmental Medicine in Wichita, Kansas. Claimant was treated and referred to a burn specialist. He was taken off work for a week. The burn was treated and covered by a bandage. Claimant was referred to a separate burn specialist by respondent. The new doctor examined claimant, replaced the bandage and returned claimant to work with restrictions. Respondent was unable to accommodate the restrictions.

On May 21, 2006, while claimant was fixing something to eat at home, the bandage covering his original burn caught fire, and claimant suffered more severe burns to his already-burned arm. The more severe burns, suffered while cooking, required claimant to undergo surgery, including skin grafts. Respondent argues these new burns are the result of a new and separate injury and, therefore, not compensable. Claimant argues the bandage on his arm was there because of the original injury and respondent's doctor was responsible for placing it there. Therefore, the new injury is a natural consequence of the original injury.

In workers compensation litigation, it is the claimant's burden to prove his entitlement to benefits by a preponderance of the credible evidence.<sup>2</sup>

The burden of proof means the burden of a party to persuade the trier of fact by a preponderance of the credible evidence that such party's position on an issue is more probably true than not true on the basis of the whole record.<sup>3</sup>

In workers' compensation litigation, when a primary injury under the Workers Compensation Act is shown to arise out of and in the course of employment, every natural consequence that flows from that injury, including a new and distinct injury, is compensable if it is a direct and natural result of the primary injury.<sup>4</sup>

However, the Kansas Supreme Court, in *Stockman*,<sup>5</sup> stated:

The rule in *Jackson* is limited to the results of one accidental injury. The rule was not intended to apply to a new and separate accidental injury such as occurred in instant case. The rule in *Jackson* would apply to a situation where a claimant's

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<sup>2</sup> K.S.A. 2005 Supp. 44-501 and K.S.A. 2005 Supp. 44-508(g).

<sup>3</sup> *In re Estate of Robinson*, 236 Kan. 431, 690 P.2d 1383 (1984).

<sup>4</sup> *Jackson v. Stevens Well Service*, 208 Kan. 637, 493 P.2d 264 (1972).

<sup>5</sup> *Stockman v. Goodyear Tire & Rubber Co.*, 211 Kan. 260, 505 P. 2d 697 (1973); see also *Nance v. Harvey County*, 263 Kan. 542, 952 P.2d 411 (1997).

disability gradually increased from a primary accidental injury, but not when the increased disability resulted from a new and separate accident.

In *Stockman*, the claimant suffered a compensable back injury while at work. The day after being released to return to work, the claimant injured his back while moving a tire at home. The *Stockman* court found this to be a new and separate accident.

The Board acknowledges that where the worsening or new injury would have occurred even absent the primary injury or where it is shown to have been produced by an intervening cause, it would not be compensable.<sup>6</sup>

Here, the new injury occurred while claimant was cooking at home. This injury is not a natural consequence of claimant's original burn, but is, instead, the result of a new and separate accident. Thus, it is not compensable. Therefore, the ruling by the ALJ finding claimant to be entitled to benefits up to the date of the second accident, but denying benefits thereafter, is affirmed.

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that the Order of Administrative Law Judge Nelsonna Potts Barnes dated July 25, 2006, should be, and is hereby, affirmed.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of September, 2006.

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BOARD MEMBER

c: James R. Roth, Attorney for Claimant  
Clifford K. Stubbs, Attorney for Respondent and its Insurance Carrier

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<sup>6</sup> *Nance v. Harvey County*, 263 Kan. 542, 952 P.2d 411 (1997).